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EXAMINER

KENNEDY, LESA M

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/703,437

Applicant(s)

FARALDO II, DAVID D.

Examiner

Lesia Kennedy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3 and 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This action is responsive to the application filed October 31, 2000. Claims 1-41 are pending examination. Claims 1-41 represent a device directed towards remote monitoring of a business site network.

#### *Drawings*

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### *Claim Objections*

3. Claim 3 is objected to because of the following informality:

The claim recites the limitation of "... the **second** host digital processing system ..." on line 6, however there was no reference to this second host digital processing system in the preceding claims. For purposes of further reviewing this claim, it will be assumed that the applicant intended to state "... the **first** host digital processing system ...".

*Claim Rejections - 35 USC § 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 9-10 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims refer to pre-setting cookies on the **host** digital processing system. This is contrary to information in the specification, which describes pre-setting cookies in a monitoring configuration (pg. 11, line 18) that resides in the **remote** digital processing system (pg. 14, line 2).

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5, 11-18, 20-23, 25-30 and 35-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Duimovich et al. (U.S. Pub. No. 2002/0052947).

Duimovich teaches the invention as claimed including a system and method for measuring the performance of Internet HTTP server applications (see abstract).

As to claim 1, Duimovich teaches a system comprising:

an intranetwork (par. 0032; Duimovich discloses a system comprising a private network);

an extranetwork coupled to the intranetwork (par. 0032; Duimovich discloses that the Internet is connected to the private network);

a first host digital processing system coupled to the intranetwork, the first digital processing system having performance parameters (par. 0032-0033; par. 0040; Duimovich discloses that Remote Sites are connected to the private network. Duimovich also discloses that the system monitors network communications between User Sites and the Remote Sites);

and a first remote digital processing system coupled to the extranetwork to monitor a performance parameter, the first remote digital processing system coupled to the extranetwork at a first location similar to that of a first expected user of the first host digital processing system (par. 0032-0033; Duimovich discloses that User Sites are connected to the Internet. Each User Site includes a Client Application for monitoring performance).

As to claim 2, Duimovich teaches the system of claim 1, wherein the extranetwork comprises a first backbone network and wherein the first remote digital processing system is coupled to the first backbone network (par 0032; Duimovich discloses that the User Sites can connect to the Internet through an Internet Service Provider network).

As to claim 3, as best understood, Duimovich teaches the system of claim 2, further comprising a second remote digital processing system to monitor a performance parameter of the first host digital processing system, wherein the extranetwork further comprises a second backbone network and wherein the second remote digital processing system is coupled to the second backbone network at a second location similar to that of a first expected user of the second host digital processing system (par. 0032-0033; Fig. 1; Duimovich discloses several User Sites connected to the Internet through Internet Service Provider networks, each User Site comprising a Client Application for monitoring performance).

As to claim 4, Duimovich teaches the system of claim 2, further comprising a monitoring operations center coupled to the extranetwork, the monitoring operations center to receive data from the first remote digital processing system (Fig. 1; par. 0033; Duimovich discloses Director Server Sites coupled to the Internet which receive performance data from the Client Applications).

As to claim 5, Duimovich teaches the system of claim 4, wherein the data includes the performance parameter (par. 0033; Duimovich discloses that the Director Server Sites receive performance data from the Client Applications).

As to claim 11, Duimovich teaches the system of claim 1, wherein the performance parameter is a timing threshold parameter (pg 5, Table 2; Duimovich discloses monitoring several timing parameters (e.g. pageLoadTime)).

As to claim 12, Duimovich teaches the system of claim 11, wherein the timing threshold parameter is a domain name system lookup time (pg. 5, Table 2; Duimovich discloses monitoring total DNS lookup time (totalDNSLookupTime)).

As to claim 13, Duimovich teaches the system of claim 11, wherein the timing threshold parameter is a connect time (pg. 5, Table 2; Duimovich discloses monitoring total connect time (totalConnectTime)).

As to claim 14, Duimovich teaches the system of claim 11, wherein the timing threshold parameter is throughput (par. 0044; Duimovich discloses measuring throughput).

As to claim 15, Duimovich teaches the system of claim 11, wherein the timing threshold parameter is a transfer rate (par. 0044; Duimovich discloses monitoring the data transfer rate between the Remote Site and client Internet Application).

As to claim 16, Duimovich teaches the system of claim 11, wherein the timing threshold parameter is latency (Table 1; Duimovich discloses monitoring the total time taken for the client to receive the data (TotalResponseDelay)).

As to claim 17, Duimovich teaches the system of claim 1, wherein the performance parameter is a link verification (pg. 4, Table 2, col. 2; par. 0099; Duimovich discloses collecting data on a specific root URL and those URLs which link from it. Duimovich also discloses monitoring the number of 'Not Found' responses to HTTP requests (numNotFoundResponses)).

As to claim 18, Duimovich teaches the system of claim 1, wherein the performance parameter is a subsidiary page verification (pg. 4, Table 2, col. 2; Duimovich discloses monitoring the total number of objects completely or partially received for a web page (numGetResponsesReceived)).

Claims 20 and 21 represent method claims that correspond to system claims 2 and 4, respectively. They do not teach or define any new limitations above claims 2 and 4, and therefore are rejected for similar reasons.

As to claim 22, Duimovich teaches the method of claim 20, wherein monitoring comprises:

determining the performance parameter for monitoring (par. 0045; Duimovich discloses that different performance parameters may be monitored);

establishing a connection with the host digital processing system (par. 0031; Duimovich discloses that User Sites connect to Remote Sites); and

performing a transaction with the host digital processing system (par. 0031; Duimovich discloses that the Remote Sites offer various on-line services to the User Sites).

As to claim 23, Duimovich teaches the method of claim 22, wherein determining comprises receiving the performance parameter through a configuration interface (par. 0039; par. 0066; Duimovich discloses that the Client Application, which collects the performance data, is automatically updated when a new version is available).

As to claim 25, Duimovich teaches the method of claim 22, wherein the performance parameter is a timing parameter associated with the transaction and wherein the method further comprises measuring the timing parameter (pg. 5, Table 2; Duimovich discloses measuring various timing parameters (e.g. `pageLoadTime`)).

Claims 26-30 represent method claims that correspond to system claims 12, 16, 14, 13 and 15, respectively. They do not teach or define any new limitations above claims 12, 16, 14, 13 and 15, and therefore are rejected for similar reasons.

As to claim 35, Duimovich teaches a method, comprising monitoring performance parameters of a host digital processing system coupled to an extranetwork using a plurality of remote digital processing systems, the extranetwork comprising a plurality of backbone



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networks, at least one of the plurality of remote digital processing systems selectively coupled to at least one of the plurality of backbone networks at a position approximate that of an expected user of the host digital processing system (par. 0031-0033; Duimovich discloses multiple User Sites comprising Client Applications which monitor the performance of Remote Sites connected to the Internet. Each User Site may connect to the Internet via an Internet Service Provider network).

As to claim 36, Duimovich teaches the method of claim 35, wherein monitoring comprises:

evaluating the performance parameters using one of the plurality of remote digital processing systems (par. 0039, 0041; Duimovich discloses that an Agent, which resides on a User Site connected to the Internet, evaluates performance for web page retrieval); and

transmitting a report on the evaluating from the one of the plurality of remote digital processing systems to another of the plurality of remote digital processing systems (par. 0039, Duimovich discloses that a summary of the performance data is transmitted to a Directory Server also connected to the Internet).

As to claim 37, Duimovich teaches the method of claim 36, wherein evaluating performance parameters includes measuring a timing threshold associated with an interaction with the host digital processing system (pg. 5, Table 2; Duimovich discloses measuring various timing parameter (e.g. pageLoadTime)).

Claim 38 represents an apparatus claim that corresponds to method claim 20. It does not teach or define any new limitations above claim 20, and therefore is rejected for similar reasons.

As to claim 39, Duimovich teaches the apparatus of claim 38, wherein the means for monitoring comprises:

means for evaluating the performance parameter (par. 0040-0041; Duimovich discloses means for collecting and computing performance metrics); and

means for reporting the evaluation of the performance parameter to a monitoring operations center (par. 0063; Duimovich discloses that the performance metrics are sent to a Directory Server).

As to claim 40, Duimovich teaches the apparatus of claim 39, wherein the performance parameter is a timing threshold (Table 2; Duimovich discloses measuring various timing parameters).

As to claim 41, Duimovich teaches the apparatus of claim 39, wherein the performance parameter is a correctness parameter (pg. 4, Table 2, col. 2; Duimovich discloses measuring the number of times contents of a web page are inaccessible, including the number of "Not Found" responses (numNotFoundResponses)).

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duimovich et al. in view of Gralla ("How the Internet Works", seventh edition)

Duimovich teaches the invention substantially as claimed (see the rejection of claim 5 above).

Duimovich fails to teach the limitation of a second extranetwork coupled to the first remote digital processing system and the monitoring operations center, the second extranetwork to transmit the data from the first remote digital processing system to the monitoring operations center.

However, Gralla teaches that the Internet comprises multiple networks (pg. 8, par. 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Duimovich in view of Gralla so as to monitor multiple networks simultaneously. One would be motivated to do so to provide a more global view of network performance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duimovich et al. in view of Gralla, and further in view of Davis et al. (U.S. Pub. No. 2001/0056483).

Duimovich teaches the invention substantially as claimed (see rejection of claim 6 above).

The combination of Duimovich in view of Gralla as applied to claim 7 fails to teach the limitation of the second extranetwork being a public switched telephone network.

However, Davis teaches a system for monitoring a computer system with a system management controller (see abstract). Davis teaches the limitation of using a telephone network (par. 0061; Davis discloses monitored devices connected to a telephone network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Duimovich in view of Davis so as to monitor different types of networks. One would be motivated to do so to provide a system-wide solution to system monitoring.

The combination of Duimovich in view of Gralla as applied to claim 8 fails to teach the limitation of the second extranetwork being a wireless network.

However, Davis teaches a system for monitoring a computer system with a system management controller (see abstract). Davis teaches the limitation of using a wireless network (par. 0061; Davis discloses monitored devices connected to a wireless network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Duimovich in view of Davis so as to monitor different types of networks. One would be motivated to do so to provide a system-wide solution to system monitoring.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duimovich et al. in view of Sweet et al. (U.S. Pat. No. 6,579,714).

Duimovich teaches the invention substantially as claimed (see rejection of claim 4 above).

Duimovich fails to teach the limitation of a queuing client to control the transfer of data to the monitoring operations center.

However, Sweet teaches a system for simulating the experience of an end user (see abstract). Sweet teaches the limitation of using a queuing client to control the transfer of data to the monitoring operations center (col. 7, lines 45-55; Sweet discloses using a queuing system to manage data sent to an RT Collector (monitoring center)).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Duimovich in view of Sweet so as to separate network-monitoring data from other network traffic. One would be motivated to do so to prevent resource contention.

Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duimovich et al. in view of Dantressangle et al. (U.S. Pat. No. 6,446,120).

Duimovich teaches the invention substantially as claimed (see rejection of claim 22 above).

Duimovich fails to teach the limitation of the performance parameter being a correctness parameter, and of evaluating the correctness parameter.

However, Dantressangle teaches a method using a computer implemented configurable stresser for testing a server computer (see abstract). Dantressangle teaches the limitation of evaluating a correctness parameter (col. 4, lines 49-56; Dantressangle discloses performing tests to verify the contents of retrieved HTML results).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Duimovich in view of Dantressangle so as to provide improved testing of web servers. One would be motivated to do so to facilitate future improvement in the performance of web servers.

As to claim 32, the combination of Duimovich in view of Dantressangle teaches the method of claim 31 above.

The combination fails to teach the limitation of determining a positive search pattern, determining a negative search pattern, and comparing the positive search pattern with the negative search pattern to verify the correctness of a content.

However, Dantressangle teaches a method using a computer implemented configurable stresser for testing a server computer (see abstract). Dantressangle teaches the limitation of: determining a positive search pattern, determining a negative search pattern, and comparing the positive search pattern with the negative search pattern to verify the correctness of a content (col. 4, lines 49-56; Dantressangle discloses verifying the contents of retrieved HTML results by comparing it to reference data).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Duimovich in view of Dantressangle so as to provide improved testing of web servers. One would be motivated to do so to facilitate future improvement in the performance of web servers.

As to claim 33, Duimovich teaches the method of claim 31 wherein evaluating comprises:

fetching an accessory file from a storage location (Table 2, col. 2; Duimovich discloses monitoring the number of objects requested for a page (numGetRequestsSent)); and

verifying that the content of the accessory file is available for retrieval (Table 2, col. 2; Duimovich discloses monitoring the number of requested objects that were successfully retrieved (numSuccessResponses)).

As to claim 34, Duimovich teaches the method of claim 31, wherein evaluating comprises:

selecting a link on a web page (Table 2, col. 2; Duimovich discloses monitoring the number of objects requested for a page (numGetRequestsSent)); and


verifying that content corresponding to the web page is accessible (Table 2, col. 2; Duimovich discloses monitoring the number of requested objects that were successfully retrieved (numSuccessResponses)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lesa Kennedy whose telephone number is (703) 305-8865. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Lesa Kennedy  
Art Unit 2151



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